

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAMES A. SUNDBERG

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Appeal No. 96-3845  
Application 08/209,260<sup>1</sup>

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HEARD: December 11, 1997

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Before COHEN, MEISTER and CRAWFORD, Administrative Patent Judges.  
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 3, 19, and 21 through 24. Claims 4 through 18, the only other claims remaining in the application, stand allowed.

Appellant's invention pertains to a method of handling capsules, a capsule handling system, and to a capsule handling method. An understanding of the invention can be derived from a

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reading of exemplary claims 1, 3, and 21, copies of which are appended to the main brief (Paper No. 13).

As evidence of obviousness, the examiner has applied the following documentation:

Feton International brochure <sup>1</sup> (known capsule handling system; as acknowledged in appellant's specification, page 1)

Norelli	2,348,749	May 16, 1944
Inman	3,552,095	Jan. 5, 1971
Austin	3,675,390	Jul. 11, 1972

The following rejections are before us for review.

Claim 21 stands rejected under 35 USC § 103 as being unpatentable over the Feton International brochure.

Claims 1 through 3, 19, and 22 through 24 stand rejected under 35 USC § 103 as being unpatentable over the Feton International brochure in view of any of Norelli, Inman, or

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<sup>1</sup> Application for Patent filed March 14, 1994. This document was submitted by appellant in parent application Serial No. 07/841,475, filed February 26, 1992, now U.S. Patent No. 5,321,932, issued June 21, 1994 and was listed as "Marketing Literature for FETON Int'l" on an "INFORMATION DISCLOSURE CITATION" form (Paper No. 2).

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Austin.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the final rejection and answer (Paper Nos. 10 and 14), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 13 and 15).

#### OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims,<sup>2</sup> the applied teachings,<sup>3</sup>

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<sup>2</sup> As to claim 1, we understand the recited method as implicitly including a step of positioning said first capsule receiving plates within said opener/encapsulater component since the step of "removing said first capsule receiving plates from said opener/encapsulater component" is expressly set forth.

<sup>3</sup> In our evaluation of the applied teachings, we have considered all of the disclosure of each teaching for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw  
Cont...  
from the disclosure. See In re Preda 401 F.2d 825, 826, 159 USPQ  
342, 344 (CCPA 1968).

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and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We do not sustain the examiner's respective rejections of appellant's claims under 35 USC §103.

At the outset, this panel of the board points out that we fully appreciate the examiner's point of view as expressed in the answer. However, for the reasons articulated, *infra*, we are of the opinion that the evidence before us does not support a conclusion of obviousness relative to the claimed subject matter.

The rejection of claim 21

Simply stated, it is our view that the Feton brochure would not have been suggestive of the capsule handling method of claim 21. Setting aside appellant's own disclosure, a review of the English language portion of the Feton document and related pictorial portions (Figures A, B, and 1 through 8) does not reveal to us any suggestion for effecting a method wherein first and second opener/encapsulater components, associated with "a"

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loader component, respectively separate capsules having top portions with an appearance different from one another and wherein the filled bottom portion of first capsules are connected to the top portions of second capsules, as claimed. The Feton document is simply silent on the method, as claimed. We recognize that another pictorial showing in the brochure portrays capsules wherein the bottoms differ from top portions thereof. However, for all we can tell, these capsules were simply supplied by a manufacturer as shown, for subsequent filling on the Feton machine. For these reasons, we determine that the evidence relied upon does not support a conclusion of obviousness under 35 USC §103.

The rejection of claims 1 through 3, 19, and 22 through 24

We understand from our analysis of the Feton reference that the disclosed automatic loading device and automatic capsule filling machine are specifically designed for "one single capsule size". In other words, the document instructs that a separate loading device and filling machine would be required for each of the capsule sizes 000, 00, 0, 1, 2, 3, and 4 mentioned therein. The relatively sparse disclosure of the Feton brochure does

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inform us that the automatic capsule filling machine includes an upper white sheet, a detachable black sheet, a middle white sheet, and a bottom part with four studs, a frame, and screws.

We also fully appreciate that the particular capsule filling apparatus of Norelli (page 3, lines 4 through 11) can be provided with alternative elements for addressing capsules of a different size, that the manual capsule filling apparatus of Inman (column 4, lines 48 through 52) can be used with a variety of capsule sizes by providing additional body section parts and cap section plates, and that the capsule filling apparatus of Austin (column 7, lines 69 through 75) may be adjusted to accommodate different size capsules by replacing hinged units including bars 326 and arms 339 on drum 320 (Figure 13).

With the above in mind, we turn now to independent claims 1 and 3.

As to the specific method of handling capsules set forth in appellant's claim 1, it is apparent to us that the applied teachings, collectively considered, would have failed to suggest the recited positioning and orienting of first and larger second

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capsules by "a" loader component to one having ordinary skill in the art. Further, we note that the particular structural configuration of Feton is expressly disclosed as being dedicated to "one single capsule size". Of course, we certainly appreciate that the respective teachings of Norelli, Inman, and Austin address apparatus modification to handle capsules of different sizes. However, it must also be kept in mind that each of the latter teachings address an apparatus structural different from that found in the Feton brochure. From our standpoint, the proposed modification of Feton would not have been suggested to an artisan by the applied teachings since it would have necessitated an entire reworking thereof, contrary to the single capsule size teaching thereof, and particularly since the secondary references each reflect distinctly different structural apparatus relative to the Feton loading device and capsule filling machine.

Similarly, we are of the view that the method of independent claim 3 would not have been obvious, i.e., a method requiring an opener/encapsulater component including a second capsule receiving plate displaceable with respect to a first capsule receiving plate, with the opener/encapsulater being capable of

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handling different sized capsules and including a housing with means for "slidably receiving" the first and second plates. Once again, it is clear to us that one of ordinary skill in the art would not have been motivated to make the proposed modification since it would have clearly necessitated an entire reworking of the Feton apparatus, contrary to the single capsule size teaching thereof, and particularly since the secondary references each reflect distinctly different structural apparatus relative to the loading device and capsule filling machine of the Feton Brochure.

In summary, this panel of the board has

reversed the rejection of claim 21 under 35 USC § 103 as being unpatentable over the Feton International brochure, and

reversed the rejection of claims 1 through 3, 19, and 22 through 24 under 35 USC § 103 as being unpatentable over the Feton International brochure in view of any of Norelli, Inman, or Austin.

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The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JAMES M. MEISTER	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

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